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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,682	07/20/2001	Zachary Gillman	GIL-3	1517

7590

07/29/2003

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EXAMINER

TSOY, ELENA

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 07/29/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/909,682

Applicant(s)

GILLMAN ET AL.

Examiner

Elena Tsoy

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Response to Amendment

1. Amendment filed on June 30, 2003 has been entered. Claims 1-4 are pending in the application. Claims 3 and 4 are withdrawn from consideration as directed to a non-elected invention.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Rejection of claims 1, 2 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been withdrawn.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1, 2** stand rejected under 35 U.S.C. 103(a) as being unpatentable over Jungk (US 4,946,505) in view of Pirtle et al (US 6,384,126) and Leon et al (US 4,409,171) for the reasons of record as set forth in Paragraph No. 5 of the Office Action mailed on December 27, 2002 (Paper No. 10).

Response to Arguments

6. Applicants' arguments filed January 6, 2003 have been fully considered but they are not persuasive.

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(A) Applicants argue that Jungk alone or in view of Pirtle et al and Leon et al discloses a process for dyeing concrete with uncompacted granules and thus expressly teaches away from preparing compacted pigment granules.

The Examiner respectfully disagrees with this argument. Jungk discloses a process for the production of **dust-free pigment built-up granules** such as iron oxide (See column 2, lines 45-52; column 3, lines 13-22) having size of about 1 mm (See column 3, line 60) using any of numerous methods known in the art (See column 2, lines 58-60, 63-68). For example, a granulating plate or an inclined rotating granulating drum (such as is available from Dela Granuliertchnik) may be used. The pigment particles roll on the granulating plate and in the drum and are thus caused to **agglomerate** and to be **consolidated**. See column 3, lines 62-66. In other words, Jungk discloses a process for converting **dusty powder** of iron oxide into **dust-free agglomerated and consolidated** built-up granules using *any of numerous methods known in the art* except for briquetting and compacting processes because they produce granules which can be dispersed with difficulty (See column 2, lines 57-62). Thus, Jungk uses a term “compacting” more as “briquetting”.

(B) Applicants argue that a process of Jungk produces a homogeneous mixture not an encapsulated structure of pigment granules of claim 2.

The Examiner respectfully disagrees with this argument. Dust-free agglomerated and consolidated built-up granules of Jungk are produced by a process substantially identical to that of claimed invention comprising the steps of rotating a mixer with a pigment powder so that the pigment powder is cascading within the mixer, and spraying a binder onto the cascading pigment granules while the mixer is rotating so as to result in the formation of pigment granules of about

1 mm (See column 3, lines 54-66). It is the Examiner's position that a pigment granules produced by a process of Jungk would also be encapsulated granules since it they are produced by a process identical or substantially identical to that of claimed invention.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is (703) 605-1171. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (703) 308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

ET

Elena Tsoy
Examiner
Art Unit 1762

July 23, 2003



SHRIVE P. BECK
SUPERVISORY PATENT EXAMINER
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